

MF 06-1

Tax Type: Motor Fuel Use Tax

Issue: Motor Fuel Distributor – 5 Day Revocation

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

---

THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	Docket No. 00-ST-0000
v.	)	License No. 0-00000
	)	License No. 0-00000
ABC OIL COMPANY, INC.	)	
	)	
Taxpayer	)	

---

**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; *John Doe, pro se*, for ABC Oil Company, Inc.

Synopsis:

The Department of Revenue ("Department") issued a Notice of License Revocation ("Notice") to ABC Oil Company, Inc. ("taxpayer"). The Notice states that the taxpayer's distributor and receiver licenses will be revoked pursuant to section 16 of the Motor Fuel Tax Act (35 ILCS 505/1 *et seq.*) because the taxpayer failed to file a bond in the amount of \$46,299 and failed to pay an assessment in the amount of \$25,532.65. The taxpayer timely protested the Notice. An evidentiary hearing was held wherein the taxpayer argued that it had paid the assessment and that the bond amount that the

Department has requested is too high. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer operates a rural fuel business and sells fuel to farmers. (Tr. p. 9)
2. On August 29, 2003, the Department issued a Notice of License Revocation to the taxpayer. The Notice states that the Department intends to revoke the taxpayer's distributor and receiver licenses. (Dept. Ex. #1)
3. The Notice states that the Department is revoking the licenses because the taxpayer failed to file a bond in the amount of \$46,299 and failed to pay a final assessment, 0-000000, totaling \$25,532.65. The Notice was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1)
4. The taxpayer has paid the final assessment H-437415 totaling \$25,532.65. (Taxpayer Ex. #2; Tr. p. 8)

CONCLUSIONS OF LAW:

The Notice issued by the Department states that the taxpayer's distributor and receiver licenses will be revoked pursuant to section 16 of the Motor Fuel Tax Act ("Act"), which provides in relevant part as follows:

The Department may, after 5 days' notice, revoke the distributor's, receiver's, or supplier's license or permit of any person \* \* \* who violates any provision of this Act or any rule or regulation promulgated by the Department under Section 14 of this Act. (35 ILCS 505/16).

Section 21 of the Act incorporates by reference sections 4 and 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provide that the Department's determination is *prima facie* correct. 35 ILCS 505/21; 120/4, 5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove that the Department's determination is incorrect. Mel-Park Drugs, Inc. v. Department of

Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the Notice was admitted into evidence. As previously stated, the Notice indicates that the Department is seeking to revoke the taxpayer's licenses because the taxpayer failed to file a bond in the amount of \$46,299 and failed to pay an assessment in the amount of \$25,532.65. The taxpayer presented a cancelled check at the hearing showing that it has paid the assessment. With respect to the bond, the taxpayer claims that the amount requested by the Department is too high.

Section 305(b) of the Motor Fuel Tax Regulations provides as follows:

Bonds are not required for first-time applicants. However, bond may be required for just cause, as determined by the Department. Bonds may be required when a licensee fails to file timely reports, when he fails to remit the proper tax, when the Department has twice received a Non-Sufficient Funds check as payment, or when an audit indicates problems severe enough that, in the Director's discretion, a bond is required to protect the interests of the Department. If a bond is required, it shall be equal to at least twice the estimated average quarterly tax liability. The average tax liability upon which the bond is based shall be determined by taking into consideration the amount of motor fuel expected to be used in all jurisdictions by such applicant. The penalty fixed by the Department shall be such as, in its opinion, will protect the State of Illinois against the failure to pay the amount hereinafter provided on motor fuel used (Section 13a.4 of the Law). 86 Ill. Admin. Code §500.305(b).

The taxpayer sells gasoline, clear diesel fuel, and dyed diesel fuel. It collects tax on the gasoline and clear diesel, but not the dyed diesel. The taxpayer provided copies of its RMFT-5 Motor Fuel Distributor/Supplier Tax Return for the months of July 2002 through July 2003. They show that the monthly average of gasoline sold over that 13-month period was 35,340.54 gallons. For clear diesel it was 41,062.46 gallons, and for dyed diesel it was 34,060.38 gallons. The taxpayer notes that with a .19 tax rate, its average monthly tax for gasoline is \$6,714.70. At a rate of .215 for clear diesel, its average monthly tax is \$8,828.43. If these amounts are added together and multiplied by

two, then the amount is \$31,086.26, which is the amount that the taxpayer contends the bond should be.

The taxpayer maintains that the Department included the dyed diesel fuel gallons in averaging the monthly gallons of fuel sold by the taxpayer. The taxpayer argues that the dyed fuel should not be included in the calculation because no tax is collected on that fuel. The taxpayer contends that the Department is asking it to post a bond on gallons that are not taxable.

The regulation states that if a bond is required, it shall be equal to at least twice the estimated average quarterly tax liability, which is a 3-month period. Even if the dyed fuel is not included in the calculations, the taxpayer's average quarterly tax liability for gasoline and clear diesel would be \$46,629.39. Twice this amount would be \$93,258.78. The Department has requested a bond in an amount that is much smaller than the amount required by the regulation. The amount requested by the Department, therefore, appears to be reasonable.

Recommendation:

For the foregoing reasons, it is recommended that the bond amount be affirmed.

Linda Olivero  
Administrative Law Judge

Enter: November 16, 2005